

1989

Bert C. Davis v. Majorie J. Davis : Reply to Brief in Opposition

Utah Supreme Court

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Bert C. Davis; Pro Se.

Phillip W. dyer; Attorney for Respondent.

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UTAH SUPREME COURT

BRIEF

890438

IN THE SUPREME COURT
OF THE STATE OF UTAH

BERT C. DAVIS,	:
Plaintiff, Appellant.	:
vs.	: Supreme Court No. 890438
MARJORIE J. DAVIS,	: Priority No. 14-b
Defendant, Respondent	:

REPLY BRIEF OF PLAINTIFF'S
PETITION FOR WRIT OF CERTIORARI

Appeal from the Judgement of the Utah
Court of 3rd District Court for Salt Lake County
Hon. David Young, Judge

Bert C. Davis
4120 Oak Meadows Dr. #21
Murray, Utah 84123

Phillip W. Dyer
Attorney for Defendant
318 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

FILED
NOV 22 1989

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"ADDENDUM"

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IN THE SUPREME COURT FOR THE
STATE OF UTAH

BERT C. DAVIS,	:	REPLY PETITION FOR WRIT OF
Plaintiff, Appellant, Petitioner	:	CERTIORARI
vs.	:	Case No. 890438
Marjorie J. Davis,	:	Priority: No. 14-b
Defendant, Respondent	:	

REPLY STATEMENT OF FACTS TO DEFENDANT'S BRIEF

REPLY NO. 1

The awarding of \$200.00 month permamnet alimony is more than most women receive in child support and 90% of women receive no alimony. The amount of defendent's Net income in dispute depends on which figures you choose to use.

The issue of granting alimony is obsolete under current judgements being rendered accross the country. The Plaintiff Bert has met his obligation to society by staying in bad marriage and raising their children to legal age.

The marriage should have been like a partnership when it dissolves, one does not owe the other a living. Also granting of alimony judgement against one's will is an unjust sentence upon a person. The plaintiff, when he entered the marriage did not ever agree to give a pension to the defendant the rest of her life if it did not work out.

Other similar cases that have come before the Court, where the woman received more income than the man. The Court has ruled against granting the man alimony.

STATEMENT OF FACTS NO. 2

Attorney fee's of \$8370.00, and \$1966.37 appeal fee's have been excessive time charges and expenses. The time charged by her counsel does not coincide with the Plaintiff's attorney of time on the phone, other charges, and double charging two client's while attending hearings more than one case at a time. The defendant's counsel has done unnecessary petty discovery work, the taking of depostions that were taken and did not relveal any new evidence, that was not revealed in previous discovery. For example arguments over his inheritance, camper price paid for, and where funds came from, the price of price for the truck etc. Numerous letters and generated Court documents. The Defendant's (Marjorie) counsel has falsely misrepresented attorney fee's. On August 11, 1989 prior to trial a list of fee's provide by him to the Plaintiff's attorney amount to \$3,224.65 plus expenses of \$390.85. If you add up fee's after the trial claimed by defendant's counsel the fee's increased to \$4,980.00 expenses to a total of \$455.10 for the same period.

The defendant's counsel has taken the opportunity to abuse his discretion using mental condition of his client and fact there was no martial debts and there were assets to generate excessive fee's. Counsel's client (Marjorie) has abused the Court to serve a vicious attack upon the Plaintiff to bankrupt the Plaintiff. With her counsel profiting heavy from their misfortune. (See exhibits in Addendum)

REPLY NO. 3

The Plaintiff has been for 2 years denied use of martial assets tools, recreation vehicles. The Plaintiff (Bert) took with him his clothes and one motor vechile. All attempts to use any of the assets were denied. The Property awarded him in 1988 has been turned over with extensive damaged to the extent of \$1430.00 by the Defendant (Marjorie), and she has refused to turn over remaining property to the extent of \$6759.00. As of this date he has no assets because of vandalism and expenses incurred since this Court case action has been taken.

REPLY NO. 4.

In reference to the \$8100.00 inheritance, approximately \$2000.00 in attorney fee's generated in defending his inheritance. The Defendant's counsel statements of Plaintiff not declaring assets is false statement. The nonmartial assets are exempt, and how he kept them in cash or travlers checks is not relavant. as they exempt.

REPLY NO. 5

The claim that the Court awarded personal property was from the Defendant's exhibit is incorrect. (Memorandum Decision Page 4 5 (b) Exhibit A is Plaintiff's (Bert).

REPLY NO. 6

The issue of the Plaintiff (Bert) that he has given the Defendant (Marjorie) use of the home until it is sold is false misrepresentation of the true facts. He has never given his permission to use the house until it is sold. And has strongly objected through out all Court proceedings to the use of his equatity in house without fair and just compensation.

REPLY NO. 6

The Plaintiff (Bert) and his friends have sustained heavy loses as result of the Defendent (Marjorie's) conduct of Vandlism of trucks, cars and homes since the he left, there have been break and entering homes, theft of personal property, assualts, and committing purjury. (See addendum) Resulting in several thosands of dollars in damages the Plaintiff (Bert and friends).

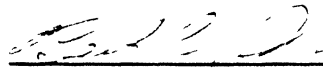
REPLY NO. 7

The Plaintiff disputes why he is not represented by an attorney and the reason previous attorney's are no longer working on the case.

CONCLUSION

This petition for Writ of Certiorari is respectfully submitted for review. The Plaintiff believe's this judgement has been a manifest of injustice and Plaintiff prays that the Court will consider this matter, and that it throughly be reviewed and either new trial or overturn previous ruling in this matter.

RESPECTFULLY SUBMITTED this 5th day of November, 1989.



BERT C. DAVIS_____
Petitioner

<u>DATE</u>	<u>SERVICES PERFORMED</u>	<u>TIME BILLED</u>	<u>EXPENSE</u>
06/17/87	Retainer received		\$ (150.00)
06/20/87	Prepare Complaint & Summons, Motion & OSC; Affidavit	2.0	
09/02/87	Phone conf/client	.2	
09/17/87	Review documents & letter to atty Boyer	.5	
09/18/87	Copies		.30
09/23/87	Copies		.75
09/28/87	Prepare Answer & Counterclaim; Notice of hearing	1.0	
09/29/87	Copies		3.15
09/29/87	Filing fee Counterclaim		30.00
09/29/87	Phone conf/atty. Boyer	.3	
09/30/87	Retainer received		(550.00)
10/01/87	Copies		3.60
10/13/87	Phone conf/client	.5	
10/13/87	Review TRO; brief conf/client	.4	
10/20/87	Copies		1.20
10/20/87	Review Affidavit & prepare Obj.	.5	
10/20/87	Prepare/attend hearing	2.5	
11/02/87	Copies		.90
11/21/87	Prepare Notice of hearing, Requests for Production, Default Certificate	1.2	
11/23/87	Copies		3.15
12/07/87	Prepare Order; Letter/atty Boyer; phone conf/atty Boyer	.6	
12/08/87	Phone conf/atty Boyer	.3	
12/14/87	Review documents in Response to Requests; phone conf/client; letter/atty Boyer; Prepare Subpoena & letter to bank	2.0	
12/21/87	Copies		3.45
12/22/87	Witness fee/Cyprus CU		25.00
12/23/87	Copies		2.25
12/29/87	Conf/client	.6	
12/30/87	Review corres/atty Boyer	.3	
12/30/87	Copies		4.35
12/31/87	Copies		NC
01/11/88	Phone conf/client	.6	
02/03/88	Phone conf/W. Wangsgaard CCU	.4	
02/03/88	Prepare 2 Notices of Records Depositions & Subpoenas	.3	
02/05/88	Copies		.15
02/09/88	Copies		1.35

<u>DATE</u>	<u>SERVICES PERFORMED</u>	<u>TIME BILLED</u>	<u>EXPENSE</u>
02/11/88	Phone conf/R. Wangsgaard CCU & America First CU	.5	
02/11/88	Copies		5.10
02/11/88	Constable service/2 subpoenas		31.25
02/16/88	Obtain documents from CCU	.7	
02/16/88	Phone conf/R. Wangsgaard & B. Muir	.4	
02/17/88	Follow-up investigation at CCU	.5	
03/01/88	Copies		.30
03/07/88	Copies		25.80
03/16/88	Review correspondence/atty Boyer; Phone conf/client re:letter; Prepare Motion & Affidavit	2.5	
03/16/88	Prepare Response/2nd Requests & Notice of hearing	.5	
03/21/88	Copies		45.45
03/28/88	Prepare Memo of Pts. & Auth.; letter re:inherited prop; Prepare Motion to Strike & Notice of hearing; letter to Commissioner Peuler	6.0	
03/29/88	Copies		14.85
04/08/88	Review letter Mr. Davis; letter to atty Russell	.5	
04/08/88	Phone conf/client & atty Russell; letter atty Russell	.5	
04/20/88	Copies		1.80
04/26/88	Prepare/attend hearing	2.0	
05/05/88	Letter/atty Russell	.3	
05/05/88	Review Comm. Peuler's Recommnd.; Phone conf/atty Russell & client RE: Recommendations	1.0	
05/12/88	Prepare Objection & Consent to entry of Order	.6	
05/12/88	Letter/atty Russell	.3	
05/16/88	Copies		3.00
05/24/88	Prepare/Notice of hearing; Letter/atty Russell	.5	
05/26/88	Prepare/Order RE: Temporary Alimony & Fees; Letter/atty Russell	1.0	
05/31/88	Copies		7.50
05/31/88	Phone conf/atty Russell	.3	
06/04/88	Phone conf/client's son re: altercation between parties	.3	
06/04/88	Phone conf/atty Russell re: altercation between parties	.3	

<u>DATE</u>	<u>SERVICES PERFORMED</u>	<u>TIME BILLED</u>	<u>EXPENSE</u>
06/06/88	Phone conf/client re:alimony	.5	
06/06/88	Prepare Motion, Affidavit & Notice of hearing; Letters to Judge Rokich & atty Russell	1.2	
06/06/88	Copies		10.35
06/07/88	Prepare/attend hearing on Objection to Recommendations	1.0	
06/07/88	Conf/atty Russell; 2 phone conf/client	.8	
06/07/88	Prepare Stipulation, Motion & Order; letter/client; arrange assignment new Judge	1.8	
06/08/88	Payment from Bert Davis		(1500.00)
06/09/88	Letter/atty Russell; Research availability With. & Pay Ord.	.8	
06/13/88	Review letter/atty Russell	.5	
06/13/88	Letter/atty Russell	.5	
06/15/88	Prepare Motion for Contempt, Affidavit & Notice of hearing	1.0	
06/15/88	Letter to client	.3	
06/17/88	Copies		3.15
06/17/88	Phone conf/atty Russell	.2	
06/21/88	Conf/atty Russell; conf/client	1.0	
06/22/88	Letter to client re:camper; Letter atty Russell re:camper	.5	
06/22/88	Prepare Notices of Deposition; Prepare Subpoenas Duces Tecum; (Sauter & Mathews)	.5	
06/23/88	Phone conf/client & atty Russell	.3	
06/23/88	Review documents; letter/Russell	.6	
06/24/88	Copies		3.60
06/24/88	Phone conf/atty Russell; Prepare 2 Stipulation, Motion & Order; letter/atty Russell; Prepare Notices of Depositions	2.0	
06/30/88	Review letter/atty Russell and enclosures	.3	
06/30/88	Phone conf/client	.3	
07/05/88	Constable service/2 Subpoenas (Sauter & Mathews)		24.00
07/05/88	Phone conf/Sauter & Russell; Prepare Amended Notice of Depo; letter/client	1.0	
07/06/88	Letter/Sauter & atty Russell	.5	
07/11/88	Copies		.45
07/11/88	Witness fee/Mathews		17.00

<u>DATE</u>	<u>SERVICES PERFORMED</u>	<u>TIME BILLED</u>	<u>EXPENSE</u>
07/11/88	Deposition/Mathews; conf/client; conf/atty Russell	2.5	
07/12/88	Deposition/Bert Davis	5.0	
07/13/88	Phone conf/atty Russell	.3	
07/18/88	Arrange pre-trial date	.3	
07/19/88	Court reporter fee/Mathews depo		140.00
07/19/88	Copies		12.00
07/29/88	Copies		54.90
08/01/88	Phone conf/client; letter/atty Russell re:docs to be produced; Letter/Peuler; Phone conf/client; 2 Phone conf/atty Russell re: depo of client; letter/atty Russell re:depo of client	1.4	
08/01/88	Review depo transcript/Bert Davis; Prepare Summons & Subpoenas Duces Tecum	2.5	
08/02/88	Prepare for pre-trial	1.5	
08/03/88	Attend pre-trial	2.0	
08/04/88	Conf/client	1.5	
08/09/88	Phone conf/client; letter atty Russell re:theft camper	.5	
08/11/88	Phone conf/atty Russell; letter to Russell; phone conf/client re:camper jacks	.7	
08/12/88	Copies		36.00
08/15/88	Phone conf/client re: camper jacks & deposition	.3	
08/16/88	Court reporter fee/Bert Davis		390.20
08/16/88	Prepare/attend client depo	4.0	
08/17/88	Phone conf/atty Russell re: camper & jacks	.3	
08/18/88	2 phone conf/atty Russell re: camper	.2	
08/30/88	Prepare Objection & Notice of Hearing; Notice to Appoint	.8	
09/02/88	2 Letters/Mr. Davis; review letter from Mr. Davis	.6	
09/02/88	Copies		2.10
09/06/88	Phone conf/Mr. Davis re:camper & continuance	.4	
09/08/88	Letter/Mr. Davis re: hearing on Withdrawal	.3	
09/10/88	Review Motions/Mr. Davis	.5	
09/12/88	Attend hearing; Prepare Orders on Continuance & withdrawal;		

<u>DATE</u>	<u>SERVICES PERFORMED</u>	<u>TIME BILLED</u>	<u>EXPENSE</u>
	Letter/Mr. Davis	1.3	
09/12/88	Prepare Trial Brief	5.0	
09/13/88	Prepare Pre-trial Order & letters/atty Russell & Mr. Davis	3.5	
09/23/88	Prepare Affidavit on fees	1.0	
09/20/88	Review Objections of Mr. Davis; Prepare Notice of Hearing	.5	
09/26/88	Trial preparation; attend pre-trial hearing (est.)	4.0	
09/27/88	Attend trial (est.)	8.0	
09/27/88	Prepare Findings & Decree (est.)	2.0	
	TOTAL	99.5	\$ 908.40
	FEES @\$75.00	\$7462.50	
	COURT COSTS (reporters, filing fees, constable fees)		632.45
	PHOTCOPYING		275.95
	AMOUNT PAID		(2200.00)

4. The foregoing time and expenses were recorded contemporaneously on the documents collectively attached hereto as Exhibit A and incorporated herein by this reference. Further, the foregoing time and expenses were necessarily incurred because plaintiff refused to disclose his assets and would not make reasonable offers of settlement and due to the complexity of the alimony and inheritance issues.

5. Your Affiant believes a reasonable hourly rate for the foregoing services is \$75.00 per hour based on the prevailing rates and fees charged in Salt Lake County, the complexity of the issues involved in this matter and the need for extensive discovery. Your Affiant therefore believes

Ms. Marjorie Davis
2660 South 8000 West
Magna, Utah 84044

STATEMENT DATE:

August 11, 1988

PREVIOUS
LESS PAYMENTS THANK YOU
BALANCE

\$1,923.20
(-0-)
\$1,923.20

ATTORNEY'S FEES:

Deposition of Bert Davis; PC-Attny Russell; \$1,125.00
Obtain pre-trial; PC-client; LT-Attny Russell
regarding; documents to be produced;
LT-Comm. Peuler; PC-Marjorie Davis; two (2)
PC-Bill Russell regarding deposition of
Marje; LT-Attny Russell regarding deposition;
RV-transcript of Bert Davis deposition;
P-Summons; P-Subpoena duces tecum; Preparation
for pre-trial; Prepare and attend pre-trial;
C-client; PC-client; LT-Attny Russell regarding
theft of camper jacks;

COSTS ADVANCED: (C); CF: Court deposition - \$ 176.45
Mathews Deposition; Constable service on
subpoena's x2;

LESS RETAINER
TOTAL BALANCE DUE

\$1,301.40
\$(-0-)
\$3,224.65
390.20
3614.85

TERMS: The Total Balance Due shown above is due and payable
upon receipt of this statement and is past due ten (10) days
from the Statement Date unless other arrangements have been
made with Mr. Dyer.

CODES FOR SERVICES PERFORMED		COSTS ADV.
C-conference with	NC-No charge	CF-court fee
CT-court hearing	P- preparation of	FF-filing fee
LF-letter from	PC-phone conference	LD-long distance
LR-legal research	R- review of	call
LT-letter to	RV-revision of	C-carbon copies

Bert C. Davis
2660 South 3000 West
Magna, Utah 84044

BILLING DATE 04-21-88

HCC T NO. 13-WRR08SDM044-1B

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
4-05-88	Conference with client(s).	WPP	0.80	\$60.00 ③
4-05-88	Review of pleadings's'.	WRR	2.20	\$165.00 ④
4-06-88	Entry of Appearance.	WPR	0.20	\$15.00
4-06-88	Telephone conf. with opposing attorney.	WPP	0.20	\$15.00 ①
4-08-88	Conference with client(s).	WRR	1.20	\$90.00 ③
4-08-88	Deliver check to Dyer.	WPP	0.30	\$0.00
4-08-88	Telephone conf. with client(s).	WPR	0.20	\$0.00
4-13-88	Telephone conf. with opposing attorney.	WRR	0.20	\$15.00 ①
4-15-88	Telephone conf. with client(s).	WRR	0.10	\$0.00
4-15-88	Telephone conf. with client(s).	WPP	0.40	\$0.00
4-15-88	Review of file(s).	WPR	0.70	\$52.50 ⑦
4-15-88	Telephone conf. with client(s).	WRR	0.30	\$0.00
4-17-88	Telephone conf. with client(s).	WRR	0.20	\$15.00 ②
4-18-88	Conference with client(s).	WRR	1.40	\$105.00 ③
4-18-88	Review of pleadings(s).	WPR	0.20	\$15.00 ④
4-19-88	Letter to opposing attorney.	WRR	0.40	\$30.00
4-19-88	Telephone conf. with client(s).	WRR	0.10	\$7.50 ②
4-19-88	Telephone conf. with opposing attorney.	WRR	0.20	\$0.00
4-19-88	Telephone conf. with opposing attorney.	WRR	0.30	\$22.50 ①
4-25-88	Conference with client(s).	WRR	0.40	\$30.00
4-25-88	File, serve Affidavit.	WPR	0.30	\$22.50
4-26-88	Telephone conf. with opposing attorney.	WPP	0.30	\$22.50
4-26-88	Preparation for hearing on motion.	WPP	1.10	\$82.50
4-26-88	Court appearance for hearing on motion.	WRR	1.40	\$105.00
5-05-88	Telephone conf. with client(s).	WPP	0.20	\$0.00
5-06-88	Telephone conf. with opposing attorney.	WRR	0.30	\$22.50
5-07-88	Telephone conf. with client(s).	WPP	0.20	\$15.00
5-09-88	Telephone conf. with client(s).	WRR	0.20	\$15.00

WILLIAM R. RUSSELL
 Attorney At Law
 102 West 500 South, Suite #202
 Salt Lake City, Utah 84101
 * * *
 (801) 322-5904

Bert D. Davis
 2463 South 8000 West
 Magna, Utah 84044

BILLING DATE 06-30-88

ACCT NO. 13-WRR0880M044-13

RE: Divorce

PREVIOUS RETAINER BALANCE \$72.70 CR
 INTEREST IS 1 % OF PAST DUE BALANCE \$0.00

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
5-31-88	Telephone conf. with opposing attorney.	WRR	0.20	\$15.00
6-06-88	Telephone conf. with opposing attorney.	WRR	0.30	\$22.50
6-06-88	Telephone conf. with client(s).	WRR	0.30	\$0.00
6-07-88	Conference with opposing attorney.	WRR	0.80	\$60.00
6-07-88	Telephone conf. with client(s).	WRR	0.30	\$22.50
6-07-88	Conference with client(s).	WRR	0.70	\$52.50
6-09-88	Telephone conf. with opposing attorney.	WRR	0.20	\$15.00
6-10-88	Conference with client(s).	WRR	1.10	\$82.50
6-10-88	Letter to opposing attorney.	WRR	0.40	\$30.00
6-10-88	Review of letter to opposing attorney.	WRR	0.30	\$22.50
6-14-88	Review of letter from opposing attorney.	WRR	0.20	\$15.00
6-16-88	Telephone conf. with opposing attorney.	WRR	0.30	\$22.50
6-20-88	Telephone conf. with client(s).	WRR	0.30	\$22.50
6-21-88	Conference with opposing attorney.	WRR	0.70	\$52.50
6-21-88	Telephone conf. with client(s).	WRR	0.20	\$15.00
6-26-88	Letter to client(s).	WRR	0.30	\$22.50
6-28-88	Letter to opposing attorney.	WRR	0.30	\$22.50
7-11-88	Taking deposition of witness(es).	WRR	2.10	\$157.50
7-11-88	Telephone conf. with client(s).	WRR	0.30	\$0.00
7-12-88	Preparation for deposition(s).	WRR	2.10	\$157.50
7-12-88	Deposition.	WRR	3.70	\$277.50
7-13-88	Telephone conf. with opposing attorney.	WRR	0.20	\$15.00
7-26-88	Telephone conf. with client(s).	WRR	0.10	\$7.50
7-27-88	Telephone conf. with client(s).	WRR	0.20	\$0.00
7-28-88	Telephone conf. with opposing attorney.	WRR	0.20	\$15.00
8-01-88	Telephone conf. with opposing attorney.	WRR	0.30	\$0.00

WILLIAM R. RUSSELL

ATTORNEY AT LAW

102 WEST 500 SOUTH SUITE 202
SALT LAKE CITY UTAH 84101
(801) 322-5904

June 29, 1988

Phil Dyer
318 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

RE: Davis v. Davis

Dear Phil:

Pursuant to our telephone conversation of June 28, 1988, it is my understanding that the hearing set for this afternoon will be continued given my medical problems. Thank you for your cooperation in this regard.

Enclosed you will find the copies of the 1985 and 1986 tax returns which Bert provided to me. Bert is collecting his pay stubs so that we can have those for your review before the deposition on July 12th at 1:30 p.m. I have also requested that Bert furnish me with a fully detailed and itemized listing of the contents of the safety deposit box. I hope that these compliances will alleviate any need for a further hearing.

While my client and I are disappointed that your client apparently will not be reasonable in allowing use of the camper during the pendency of the proceedings, we are currently debating whether to force the issue of the camper and the tools through a court hearing. If you have any progress on either allowing use of the camper, or allowing a free exchange of the tools including the large equipment such as compressors, please contact me at the office so that we can avoid any cost attendant with a motion for such relief.

Thank you for your cooperation and indulgences given my schedule and medical condition. If you have further questions or comments, please do not hesitate to contact me. I will be returning to Salt Lake on July 8th, and will be available in my office most of the day.

Sincerely Yours,

WR Russell / sjm

William R. Russell

WRR:sjm
Enclosures
cc: Bert C. Dart ✓

6-29-88

LAURA L. BOYER

ATTORNEY AT LAW

3167 WEST 4700 SOUTH

SALT LAKE CITY, UTAH 84118

TELEPHONE (801) 964-6100

March 15, 1988

Phillip Dyer, Esq.
318 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

RE: Davis v. Davis

Dear Phil:

In response to your March 7, 1988 letter, Mr. Davis will not be paying said sum of \$500.00 as and for temporary attorneys fees. I did finally have the opportunity to discuss the bank records with Mr. Davis and it is clear that these monies can be traced to his family inheritance acquired by him approximately three year ago in the amount of \$8,100.00. America First Credit Union held the majority of said funds until April 4, 1987, at which time they were withdrawn and transferred to Cypress Credit Union, on April 7, 1987. The travelers checks were debitted to said account and there remained a balance of said account of \$1,186.12 of June 2, 1987. Mrs. Davis was certainly aware of this inheritance, its amount and the date it was paid. No secrets have been kept from her and this discovery has merely shown up information that she was well aware of. As of the date of the proposed Court Order, December 8, 1987, Mr. Davis did not have sufficient "marital" funds with which to pay the \$500.00 requested attorneys fees. He had used \$829.32 from that account to pay the parties' real property taxes on November 17, 1987, after Mrs. Davis refused to pay the same.

Also in 1987 Mr. Davis intended to take a trip and use the camper to save money on lodging expenses and food. However, because Mrs. Davis refused to allow him to take this marital asset, he was forced to have to spend money on motels and restaurant food for the entirety of his trip. Mrs. Davis has also wrongfully denied his access and the use of his recreational vehicles and motorcycles.

In our responses to request for documents I provided you with a copy of the location of Mr. Davis's safety deposit box which apparently only has documents in it.

Perhaps I cancelled the Motion to Compel Hearing prematurely because when I received your responses they are clearly inadequate. Contained in those documents where do I find any bank records whatsoever for Mrs. Davis and/or any other person

Phillip Dyer, Esq.
March 22, 1988
Page 2

holding funds on her behalf i.e., her children. This information was explicitly requested and was not provided to us. If the same has not been received by my law office on or before March 22, 1988, I will immediately re-set a Motion to Compel Hearing.

Obviously your law office is incurring many hours and legal expenses on behalf of Mrs. Davis in pursuit of obtaining for her a share of Mr. Davis' "separate" property. Mrs. Davis was well aware that Mr. Davis has said funds, and the source being an inheritance, and her continual "digging" to verify that information certainly will not be compensated by the court. The focus of the 1987 hearing was alimony and attorneys fees to be awarded to yourself. Then, the focus of the discovery that you made was as to his assets in order to acquire the \$500.00 attorneys fees and to divide up "marital" assets. These bank funds being non-marital assets, Mr. Davis did not feel obligated to divulge non-marital asset information. We will make our argument at the time of the trial against the award of all unnecessary attorneys fees incurred by your law office.

Enclosed herein please find the certificate of readiness for trial which I am filing with the court to facilitate a resolution of this case. By signing and filing the same, I am not waiving any motion I may want to bring to compel responses to the interrogatories which you believe you satisfactorily answered which have not been fully responded to. It is such a blatant omission from the answers, after I struck the hearing, that I will be asking for attorneys fees for having to set both hearings and attend one.

At this time Mr. Davis is preparing a settlement proposal with respect to assets of this marriage as soon as I obtain the same I plan on making an offer to settle this case in the very near future.

Sincerely,

LAURA L. BOYER
Attorney at Law

LLB:mc
Enclosure

LAURA L. BOYER
ATTORNEY AT LAW
3167 WEST 4700 SOUTH
SALT LAKE CITY, UTAH 84118
TELEPHONE (801) 964-6100

January 27, 1988

Phillip W. Dyer, Esq.
136 South Main, Suite 320
Salt Lake City, Utah 84101

RE: Davis v. Davis Divorce Matter

Dear Phil:

It has been brought to my attention that your client, Marge Davis, has again entered the residence of Bert Davis, taken items therefrom, and has tampered with his vehicle by entering it and rummaging through it. He is certain that she is the vandal, not only because she knows where he goes to school and where he lives, but also because he has received several phone calls at all hours where someone will hang up, and his lady friend has received phone calls from her whereby she has made crude remarks. I did intend to bring a restraining order against Mrs. Davis to prevent any similar acts, but time will not permit as I am leaving town first thing tomorrow morning for a three-week trip to Florida. I will be out of my law office from January 28 through February 18, 1988.

This problem with Mrs. Davis constantly harassing Mr. Davis has got to stop. It is evident to me, and you can confirm this with her counselor, that she is harboring much hostility toward Mr. Davis and I am certain that she is constantly perpetrating his privacy and vandalizing his property. If one more incident occurs, we will proceed with a restraining order and seek attorney's fees for our trouble. This has been a continual course of conduct on Mrs. Davis' part, which is intolerable.

I shall contact you when I return from my trip and discuss any settlement negotiations possible regarding this divorce matter.

Sincerely,

LAURA L. BOYER
Attorney at Law

LLB:z

cc: Third District Court
Bert Charles Davis v. Marjorie Davis
Civil No. D87-3653

SHERIFF'S OFFICE
SALT LAKE COUNTY

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

OCT 31 1988

H. Dixon, Clerk 3rd Dist. Cou
By N. D. "PETE" HAYWARD Deputy Clerk
SHERIFF
CHARLES J. SHEPHERD
CHIEF DEPUTY

Metropolitan Hall of Justice
437 South Second East
Salt Lake City, Utah 84111



874903653

REPORT OF A POLYGRAPH EXAMINATION

TO: JUDGE YOUNG
RE: MARJORIE DAVIS

ON OCTOBER 26, 1988, A POLYGRAPH EXAMINATION WAS GIVEN TO MRS. DAVIS. THE PURPOSE OF THE EXAMINATION WAS TO DETERMINE IF THE SUBJECT WAS INVOLVED, HAD KNOWLEDGE OF, OR KNEW WHO DID COMMIT THE OFFENSE DETAILED IN THE REPORTS THAT YOU FURNISHED FOR THE EXAMINATION.

PRIOR TO CONDUCTING THE POLYGRAPH EXAMINATION, THE POLYGRAPH INSTRUMENT WAS EXPLAINED TO THE SUBJECT. SHE APPEARED TO UNDERSTAND AND WAS COOPERATIVE. THE TECHNIQUE USED IS REFERRED TO AS A ZONE OF COMPARISON TEST, UTILIZING CONTROL QUESTIONS AND RELEVANT ISSUE QUESTIONS.

THE FOLLOWING RELEVANT ISSUE QUESTIONS WERE USED ON THE POLYGRAPH EXAMINATION:

- QUESTION #2: Regarding Burt's allegations, do you intent to tell the truth to each question about this? ANSWER: Yes.
- QUESTION #5: Did you enter Burt's truck on September 28, 1988 at 4120 So. Oak Meadows. ANSWER: No.
- QUESTION #7: Were you at 4120 Oak Meadows on September 28, 1988 and enter Burt's truck? ANSWER: No.
- QUESTION #10: Do you know who entered Burt's truck on September 28, 1988? ANSWER: No.

A NUMERICAL SYSTEM IS USED IN EVALUATING POLYGRAPH CHARTS. AN AGGREGATE SCORE OF -5 TO +5 IS DEEMED AN INCONCLUSIVE TEST AND NO OPINION OF TRUTH OR DECEPTION IS GIVEN BY THE EXAMINER. A score of +6 OR GREATER IS A TRUTHFUL POLYGRAPH RESULT. A SCORE OF -6 OR GREATER IS A DECEPTIVE POLYGRAPH RESULT.

THE AGGREGATE SCORE ON THE POLYGRAPH TEST FOR MARJORIE DAVIS IS -12, INDICATING DECEPTIVE. IT IS THE FINAL OPINION OF THE POLYGRAPH EXAMINER THAT THE SUBJECT IS DECEPTIVE WHEN SHE ANSWERS THE QUESTION ABOUT THE REPORTED INCIDENT.

REPORT BY
Virgil Johnson
VIRGIL JOHNSON
POLYGRAPH EXAMINER

SHERIFF'S OFFICE

SALT LAKE COUNTY

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

OCT 31 1988

H. Dixon, Clerk 3rd Dist. Cou
By *[Signature]*

Deputy Clerk
N. D. "PETE" HAYWARD
SHERIFF
CHARLES J. SHEPHERD
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REPORT BY

[Signature]
VIRGIL JOHNSON
POLYGRAPH EXAMINER

CERTIFICATE OF HAND DELIVERY

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

Bert Davis being duly sworn, depose and says:

That he served PETITIONER'S REPLY BRIEF OF WRIT OF
CERTIORARI upon the
following parties by placing a true and correct copy thereof in
an envelope addressed to:

Phillip W. Dryer
318 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

DATED this 21ST day of November, 1989.

Bert C. Davis

SUBSCRIBED AND SWORN to before me this 21ST day of

NOVEMBER, 1989.

Barry L. Hatten

Notary Public
Residing at:
Salt Lake County, Utah

My commission expires: JULY 21, 1991